

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MICHAEL COLLINS
Plaintiff

V.

NO. 1:96CV274-B-D

JIM COOP, in his individual
capacity, EARNEST CUNNINGHAM,
in his individual capacity, and
MARSHALL COUNTY, MISSISSIPPI
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for summary judgment.

The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

On June 29, 1995, the plaintiff, a deputy with the Shelby County (Tennessee) Sheriff's Department, was arrested in Marshall County, Mississippi, for receiving stolen property. At the preliminary hearing, the local Justice Court Judge dismissed the charges for lack of probable cause. Even after dismissal, the arresting officer insisted that he would prosecute the plaintiff through presentation of the evidence to the grand jury. Although the case was never presented to the grand jury, for approximately one year after the arrest the arresting officer continued to profess his intent to pursue the case.

On the day of the arrest, the plaintiff was visiting with family in Holly Springs, Mississippi. The plaintiff's nephew, Chris Collins, asked the plaintiff to drive him out to Red Banks (a community near Holly Springs) to buy tires for a car that Chris was working on. The plaintiff ended up on Moore Road, in an area of the county which the local sheriff's department

regarded as a drug trafficking area.

Earlier in the day, David Clark, a truck driver with a load of new tires in route to Gadsden, Alabama, had stopped on Moore Road, for reasons that are not totally clear. Apparently, Clark was a drug addict, who claims that he wanted to be arrested so that he could get treatment for his addiction.

According to the plaintiff, as he was driving down Moore Road he found several new tires by the side of the road that appeared to be abandoned. He and Chris began to load the tires into his car when a vehicle stopped and told him that the truck selling the tires was parked just over the hill. The plaintiff then drove over the hill, saw Clark's tractor-trailer parked on the side of the road, and pulled in behind it. The situation appeared suspicious to the plaintiff, so he began unloading the tires from his car, while Chris obtained information from the side of the truck.

At that moment, Officers Coop (a defendant herein) and Worsham, deputies with the Marshall County Sheriff's Department, arrived on the scene. Upon seeing a tractor-trailer parked in a remote, non-commercial location with its rear doors open and an individual who appeared to be loading tires into the back of his car, the deputies stopped to investigate. During the investigation, Clark allegedly told Coop that the plaintiff had given him crack cocaine in exchange for a set of new tires. Later, a search of Clark's truck turned up several rocks of crack cocaine. The plaintiff was arrested for receiving stolen property.

The plaintiff has filed suit under 42 U.S.C. § 1983 for violation of his Fourth and Fourteenth Amendment rights to be free from false arrest, malicious prosecution, abuse of process and deprivation of liberty without due process of law. The plaintiff has also asserted a cause of action under state tort law for false arrest, malicious prosecution, abuse of process and

defamation. In response to the defendants' motion for summary judgment, the plaintiff has agreed to dismiss his state law claims against all defendants, as well as his federal claims against defendant Marshall County and against defendants Coop and Cunningham in their official capacities. Thus, the only remaining claims are the plaintiff's federal claims against Coop and Cunningham in their individual capacities.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

A. Claims Against Defendant Coop

The defendant Coop has raised the defense of qualified immunity. Under the facts of this case, the qualified immunity determination will turn upon whether a reasonable officer could have believed the arrest (and subsequent prosecution) to be lawful. Gibson v. Rich, 44 F.3d 274, 277 (5th Cir. 1995). Even a deputy who mistakenly, but reasonably, believes that he has probable cause for an arrest is entitled to qualified immunity. Id.

Both false arrest and malicious prosecution are actionable under § 1983. Eugene v. Alief Indep. Sch. Dist., 65 F.3d 1299, 1303 (5th Cir. 1995), cert. denied, 134 L. Ed. 2d 782 (1996). Upon due consideration, the court finds that there are genuine issues of material fact including, but not limited to, whether the defendant Coop had probable cause to arrest the plaintiff for the crime of receiving stolen property and whether the defendant Coop acted with malice in instituting criminal proceedings against the plaintiff. Therefore, the court finds that the defendants' motion for summary judgment as to the federal claims against defendant Coop should be denied.

B. Claims Against Defendant Cunningham

The defendant Cunningham is the former Sheriff of Marshall County, Mississippi. The plaintiff has not presented any evidence that would indicate that Cunningham was directly involved in either the plaintiff's arrest or prosecution. It is well-settled that there is no vicarious liability under § 1983. Pierce v. Texas Dept. of Criminal Justice, 37 F.3d 1146, 1150 (5th Cir. 1994), cert. denied, 131 L. Ed. 2d 849 (1995); Johnson v. Moore, 958 F.2d 92, 93 (5th Cir. 1992). Supervisory officials may only be liable in their individual capacity if they actively participate in the constitutional deprivation or if, as a policy-making official, they implement a policy that causes the plaintiff's injury. Thompkins v. Belt, 828 F.2d 298, 303-304 (5th Cir. 1987). There is no evidence that Cunningham either actively participated in the alleged

constitutional violations or implemented a policy that violated the plaintiff's constitutional rights. Thus, the court finds that the defendants' motion for summary judgment as to the federal claims against defendant Cunningham should be granted.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion should be granted as to the federal claims asserted against defendant Cunningham and denied as to the federal claims asserted against defendant Coop, each in their individual capacities. Furthermore, the plaintiff's federal claims against defendant Marshall County, Mississippi, and defendants Coop and Cunningham in their official capacities, as well as the state claims asserted against all defendants, should be dismissed pursuant to the aforementioned agreement of the plaintiff.

An order will issue accordingly.

THIS, the ____ day of July, 1997.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE